plea—Objection to such plea after issue joined. A demurrer to a plea required by statute to be verified by affidavit does not bring to the attention of the court the lack of the affidavit. The affidavit is no part of the plea. The plaintiff should object to the reception of the plea when tendered because not so verified. He cannot make the objection after having taken issue, either of law or fact, on it.

CLARK v. HULTZER.—Decided at Wytheville, June 16, 1898.—*Harrison*, J. Absent, *Cardwell*, J:

1. SPECIFIC PERFORMANCE—*Character of title required—Misdescription of property.* Specific performance of a contract for the sale of real estate will not be decreed on the application of the vendor unless his ability to make such title as he contracted to make is unquestionable; but a false description in a deed under which the vendor claims does not cast a cloud upon his title, if, after rejecting so much of the description as is false, there remains a sufficient description to ascertain with legal certainty the subject-matter to which the deed applies.

2. DEEDS—*Repugnant descriptions of property conveyed.* A statement in a deed that the lot conveyed is situated on the northeast corner of two streets mentioned, when in fact it is on the southwest corner of said streets, does not affect the deed where it appears that the grantor owned no property on the northeast corner, but did own the lot on the southwest corner; that possession of the last mentioned lot had been taken and held for a number of years and there are other sufficient descriptions of the lot on the southwest corner contained in the deed.

3. SPECIFIC PERFORMANCE—*Release of encumbrances not recorded.* Where a vendor, along with his deed to the vendee, tenders formal deeds of release of deeds of trust on the property conveyed, to be recorded by the vendor as soon as the vendee accepts the deed tendered him, this is all that is necessary to entitle the vendor to have specific performance. It is not necessary that such releases should be first actually recorded.

4. SPECIFIC PERFORMANCE—*Cloud on title—Taxes.* As a vendee of land has the right to apply his purchase money towards the payment of taxes on the land, the fact that the taxes for the current year in which the property is sold have not been paid is not a valid objection to the title.

5. SPECIFIC PERFORMANCE—*Change of circumstances and delay—Mere depreciation in values.* Where there has been a change of circumstances or relations which renders the execution of a contract for the sale of land a hardship on the defendant, and this change grows out of or is accompanied by an unexcused delay on the part of the plaintiff, the change and delay together will constitute a sufficient ground for denying a specific performance, when sought by the one thus in default. But the mere depreciation in the value of land, without fault on the part of the vendor, is no reason for refusing him a decree for specific performance.

IRON BELT BUILDING & LOAN ASSOCIATION v. J. S. GROVES AND OTHERS.—Decided at Wytheville, June 23, 1898,—*Buchanan*, J:

1. ACKNOWLEDGMENTS—*Officer a grantee—Officer's ignorance of fact—Refusal to accept trust—Notice.* A grantee in a deed, or a beneficiary under it, is incapable of taking or certifying an acknowledgment of it for recordation. The fact that the

trustee in a deed of trust who took the acknowledgment of the grantor did not know at the time that he was a party to the deed, and refused to accept the trust as soon as he discovered that he was a trustee, is wholly immaterial. Recordation upon such acknowledgment is not constructive notice of the deed.

OGLESBY'S EX'X v. HUGHES AND OTHERS.—Decided at Wytheville, June 23, 1898.—*Harrison*, J:

1. MINING LEASE—*Agreement of parties as to construction of lease—How treated by courts.* In a suit to rescind a mining lease where the bill charges, and the answer admits, that the lease was terminable at the will and pleasure of either party, it will be so treated, and the lease held to have been terminated by the institution of the suit.

2. MINING LEASE—*Terminable at will—Rights and liabilities of lessor and lessee.* A mining lease for a period of ten years, terminable at the will of either party during that term, which provides that the lessee shall remove not less than an average of 12,000 tons of ore per year, does not bind the lessee to remove that quantity each year, but only an average of that quantity during the ten years, and if the lease is terminated by the lessor without fault of the lessee at an early period of the lease, the lessee is only bound to pay the price agreed for the ore actually mined; and if he has made advances to the lessor on account of royalties contemplated under the lease, he is entitled to recover of the lessor the amount so advanced, less the royalties due by him for ore actually mined.

W. S. MCCLANAHAN v. IVANHOE LAND & IMP. CO.; J. L. TREDWAY v. SAME; J. B. WAUGH v. SAME; SNEAD'S ADM'R v. SAME; MRS. S. U. SNEAD v. SAME; SNEAD & SNEAD v. SAME.—Decided at Wytheville June 23, 1898.—*Cardwell*, J:

1. STOCK SUBSCRIPTIONS—*Fraud in procurement—Rescission—Payment of premium to a third party—Case in judgment.* A person who has been induced to become a subscriber to the stock of a company through the fraud of the company and its misrepresentation of material facts, may, on discovery of the fraud and misrepresentation, have his contract of subscription rescinded, and recover back the purchase money paid with interest thereon, although he may have paid a third party a premium or bonus to get the stock. In the case in judgment, the contract of subscription was made by the appellant with the company, it was obtained by misrepresentations of material facts made directly to him, the certificates were issued directly to him, the cash payment and the subsequent assessments were paid by him, and though he may have paid a third party a premium or bonus to get the stock, there is not an intimation, either in the certificate or the record, that the stock had ever been subscribed to by any other person and transferred by such other person on the books of the company to the appellant. The just and fair inference, therefore, is that such third person to whom he may have paid a premium or bonus stood to the company in the relation of agent, and the contract will be rescinded and a decree pronounced against the company for the purchase price paid with interest from the date of payment.